

FENNEMORE CRAIG, P.C.  
Anthony W. Austin, Esq., NV Bar No. 10850  
Kendall M. Lovell, Esq., NV Bar No. 15590  
9275 W. Russell Rds., Suite 240  
Las Vegas, NV 89148  
Telephone: (702) 692-8000  
Facsimile: (702) 692-8099  
Email: [aaustin@fennemorelaw.com](mailto:aaustin@fennemorelaw.com)  
Email: [klovell@fennemorelaw.com](mailto:klovell@fennemorelaw.com)

*Attorneys for Plaintiffs United Natural Foods West, Inc. and United Natural Foods, Inc.*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

In re

AFFINITY LIFESTYLES.COM, INC.,

Debtor

UNITED NATURAL FOODS WEST, INC.  
and UNITED NATURAL FOODS, INC.,

Plaintiffs,

v.

REAL WATER, INC., AFFINITY  
LIFESTYLES.COM, INC., REAL WATER OF  
TENNESSEE, LLC, SENTINEL INSURANCE  
COMPANY, LIMITED, GREAT AMERICAN  
INSURANCE GROUP, PEERLESS  
INDEMNITY INSURANCE COMPANY,  
WEST AMERICAN INSURANCE  
COMPANY, and OHIO SECURITY  
INSURANCE COMPANY,

Defendants.

Civil Case No. 23-cv-01297-GMN

Received via Transmittal from Bankruptcy  
Case No. BK-S-21-14099-NMC

Chapter 7

Adv. Pro. No. 23-01106-NMC

Hon. Gloria M. Navarro

**PLAINTIFFS' MOTION TO CONSOLIDATE RELATED  
PROCEEDINGS AND ESTABLISH COMBINED BRIEFING  
SCHEDULE, OR, IN THE ALTERNATIVE, TO STRIKE UNSERVED PAPERS**

Plaintiffs United Natural Foods, Inc., and United Natural Foods West, Inc. (together, "UNFI"), by and through counsel, hereby submit this motion ("Motion") to request that the Court

1 consolidate this action with Civil Case No. 23-cv-00756-GMN-NJK and establish a combined  
2 briefing schedule for the matters at issue, or, in the alternative, to strike unserved papers. In  
3 accordance with LR 42-1(b), UNFI will file and serve this Motion in the above-captioned case and  
4 in the case with which consolidation is sought.

5 This Motion is based on the following Memorandum of Points and Authorities, all pleadings  
6 and papers on file, and any oral argument this Court may entertain.

### 7 **MEMORANDUM OF POINTS AND AUTHORITIES**

#### 8 **I. INTRODUCTION**

9 1. This civil action (“Sentinel Proceeding”) is before the Court for consideration of  
10 Sentinel Insurance Company, Limited’s (“Sentinel”) Motion for Withdrawal of Reference  
11 (“Sentinel Motion”) filed in the above-captioned adversary proceeding (“AVP”) and transmitted to  
12 this Court in accordance with Fed. R. Bankr. P. 5011(a). UNFI is the Plaintiff of record in the AVP,  
13 and, as such, is the party against whom relief is sought in the Sentinel Proceeding. However, UNFI  
14 has not been served with the Sentinel Motion and has yet to receive any notice or due process in  
15 connection with the Sentinel Proceeding. UNFI was informed of the pendency of the Sentinel  
16 Proceeding only by a second-hand reference to the case number in the notice of transmittal form of  
17 a separate Motion to Withdraw the Reference (“Liberty Motion”) filed in the AVP on September  
18 12, 2023 by Defendants Ohio Security Insurance Company, Peerless Indemnity Insurance  
19 Company, and West American Insurance Company (collectively, “Liberty”). UNFI was also not  
20 served with the Liberty Motion but was notified of the assignment of that motion to Civil Case No.  
21 23-cv-00756-GMN (“Liberty Proceeding”) by email sent by counsel for Liberty on or about  
22 September 28, 2023.  
23

24 2. UNFI submits that the Liberty and Sentinel Motions may be stricken due to lack of  
25 service, and that any decision made thereon is subject to vacatur unless and until service is  
26 effectuated. *See* LR 5-1(b). Nonetheless, for the convenience of the Court and the parties, because  
27  
28

1 the Liberty and Sentinel Motions are substantively indistinguishable, UNFI respectfully requests  
2 that the Court consolidate the Sentinel and Liberty Proceedings and establish a common briefing  
3 schedule whereby UNFI may oppose, and the Court may consider, the Liberty and Sentinel Motions  
4 simultaneously. To the extent the Court grants relief as requested herein, UNFI will waive formal  
5 service of the Sentinel and Liberty Motions.

## 6 **II. BACKGROUND**

### 7 UNFI's Adversary Proceeding

8  
9 3. UNFI commenced the AVP against the above-captioned consolidated debtors  
10 ("Consolidated Debtors") and various of the Consolidated Debtors' insurers, including Sentinel and  
11 Liberty, seeking declaratory relief from the Bankruptcy Court on the basis of its December 21, 2021  
12 order ("Consolidation Order") substantively consolidating the Consolidated Debtors' bankruptcy  
13 estates for all purposes. [Bankr. Case No. BK-S-21-14099-NMC ("Main Case"), E.C.F. No. 99]  
14 Among other things, the AVP requests that the Bankruptcy Court clarify the effect of the  
15 Consolidation Order as to the rights and interests of the Consolidated Debtors and UNFI, including  
16 with respect to certain insurance policies issued by Sentinel and Liberty that constitute property of  
17 the Consolidated Debtors' bankruptcy estate.

### 18 Sentinel's Motion to Withdraw the Bankruptcy Reference

19  
20 4. Sentinel filed the Sentinel Motion [AVP, E.C.F. No. 19] on or about August 9, 2023  
21 seeking permissive withdrawal under 28 U.S.C. § 157(d) on the basis that (1) the AVP in part  
22 requires adjudication of the parties' private contractual rights under the relevant insurance policies;  
23 (2) those issues are "noncore" and so cannot be finally adjudicated by the Bankruptcy Court; and  
24 (3) consequently, judicial economy and other factors articulated in *In re Orion Pictures Corp.*, 4  
25 F.3d 1095, 1101 (2nd Cir. 1993) support permissive withdrawal of the bankruptcy reference.  
26

27 5. The Sentinel Motion was assigned to this Court under the above-captioned civil case  
28

1 number (“Sentinel Case Number”) on or about August 11, 2023. However, UNFI never received  
2 any notice regarding the Sentinel Case Number and was never served with the Sentinel Motion as  
3 docketed in this case, informally or otherwise. The operative notice of transmittal (“Sentinel  
4 Transmittal”) entered in the Bankruptcy Court and served on the parties contains only the following  
5 reference to a District Court case number: “Withdrawal of Reference Filed in the Same Bankruptcy  
6 Case or in a Related ADV Case[:] 23-cv-00756.” [AVP, E.C.F. No. 25]. Insofar as that case number  
7 purports to notify the parties of the District Court case in which papers related to the Sentinel Motion  
8 must be filed, it is incorrect. That case number was then associated only with a previous Motion to  
9 Withdraw the Reference filed on or about May 12, 2023 in *another* adversary proceeding filed in  
10 the Main Case to which UNFI is not and has never been a party. *See* Civil Case No. 23-cv-00756-  
11 GMN, Dkt. 1 (motion to withdraw the reference in “Adv. Proc. No.: 23-01082-NMC”).<sup>1</sup>

12  
13  
14 6. On or about August 16, 2023, counsel for UNFI contacted the clerk’s office for the  
15 Bankruptcy Court (“Clerk’s Office”) to inquire as to whether the Sentinel Motion had yet been  
16 docketed in the District Court, given that the Sentinel Transmittal appeared only to refer to a  
17 previous, unrelated motion to withdraw the bankruptcy reference. The Clerk’s Office informed  
18 counsel that the case number set forth in the Sentinel Transmittal was, as suggested, merely a  
19 reference to previous withdrawal of the reference motions filed in connection with the Main Case,  
20 and that a subsequent notice would be entered in the AVP when a District Court case number was  
21 assigned to the Sentinel Motion. However, no such notice was ever entered in the AVP, and there  
22 is nothing docketed in the AVP suggesting that the Sentinel Motion had been assigned to the  
23 Sentinel Case Number or had been docketed in the District Court. It seems, therefore, that UNFI  
24

25 \_\_\_\_\_  
26 <sup>1</sup> The Liberty Motion was subsequently docketed under 23-cv-00756 on or about September 13,  
27 2023, as described below. But at the time of the Sentinel Transmittal, that case number only  
28 included filings regarding a motion to withdraw the reference in an adversary proceeding  
unrelated to UNFI’s AVP. *See* BK. ADV. Case No. 23-01082-NMC.

1 could expect to receive notice of the Sentinel Proceeding only from Sentinel itself, but Sentinel  
2 made no effort to that effect.<sup>2</sup> UNFI has consequently received no electronic notices as to filings in  
3 the Sentinel Proceeding and, but for a courtesy notice provided by Liberty, as described below,  
4 UNFI would have remained justifiably ignorant of its pendency.

5 Liberty's Motion to Withdraw the Bankruptcy Reference

6  
7 7. On or about September 12, 2023, Liberty filed the Liberty Motion, seeking  
8 permissive withdrawal of the bankruptcy reference on grounds substantively identical to those  
9 asserted in the Sentinel Motion: that certain of UNFI's claims in the AVP require adjudication of  
10 contract rights under relevant insurance policies; that those claims are "noncore"; and the factors  
11 articulated in *In re Orion Pictures Corp.*, 4 F.3d 1095, 1101 (2nd Cir. 1993) support permissive  
12 withdrawal of the bankruptcy reference. A notice of transmittal for the Liberty Motion ("Liberty  
13 Transmittal") was entered in the AVP on September 13, 2023; the Liberty Transmittal contains only  
14 the following reference to any District Court case numbers: "Withdrawal of Reference Filed in the  
15 Same Bankruptcy Case or in a Related ADV Case[:] 23-cv-00756-GMN; 23-cv-01297-GMN[.]"  
16 [AVP, E.C.F. No. 75].  
17

18 8. On or about September 28, 2023, counsel for Liberty sent an email ("September 28  
19 Email") notifying UNFI that the Liberty Motion had been docketed in the district Court and  
20 attaching courtesy copies of the Liberty Motion as docketed (which reflected that the Liberty  
21 Proceeding had been assigned to the case number 23-cv-00756, which was previously referenced in  
22 the Sentinel Transmittal). UNFI was not otherwise served with the Liberty Motion or notified  
23 regarding the Liberty Proceeding. The September 28 Email was the first indication that the Sentinel  
24 and Liberty Motions had been docketed in the District Court without a corresponding entry in the  
25

26  
27 <sup>2</sup> Notably, Sentinel has not filed any certificate or other proof of service as to *any* party in the  
28 Sentinel Proceeding.



**A. The Sentinel and Liberty Motions May be Stricken Due to Lack of Service.**

11. Under LR 7-2(a) all motions must be “served on all other parties who have appeared.” Moreover, formal paper service is required “[w]hen the document is a summons, complaint, petition, *or other document initiating a civil case.*” (emphasis added). Here, neither the Sentinel Motion nor the Liberty Motion have ever been served on UNFI as docketed in the District Court. To the extent Liberty’s September 28 Email could be construed as affording UNFI notice (at least of the Liberty Proceeding), service must still be effectuated formally because the Liberty Motion constitutes a document initiating a civil case.<sup>6</sup>

12. Accordingly, the Liberty and Sentinel Motions constitute unserved papers that may be stricken, and any decision thereon may be vacated unless and until service is effectuated. LR 5-1(b) (“Either on its own initiative or on a motion by a party, the court may strike an unserved paper or vacate any decision made on an unserved paper.”). Nonetheless, for the convenience of the Court and the parties, UNFI will agree to waive formal service of the Liberty and Sentinel Motions if relief is afforded as described below.

**B. The Liberty and Sentinel Proceedings involve a Common Question of Law and Fact and So Should Be Consolidated and a Combined Briefing Schedule Should be Established.**

13. “Under Fed. R. Civ. P. 42(a), if actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay.” LR 42-1(b). As described above, the Sentinel and Liberty Motions involve common, if not identical, questions of law and fact. Both motions depend on the assertion that, because the AVP will in part

---

<sup>6</sup> UNFI nonetheless appreciates Liberty’s courtesy providing the foregoing notice, without which UNFI would have remained in the dark about the Liberty and Sentinel Proceedings.

1 involve an adjudication of rights and obligations under the relevant insurance policies, some of the  
2 issues in the AVP are noncore and, as such, the AVP is subject to the test for permissive withdrawal  
3 set forth under *In re Orion Pictures Corp.*, 4 F.3d 1095, 1101 (2nd Cir. 1993).

4       14. These factors include (1) whether the AVP involves noncore claims; (2) whether the  
5 forum serves the interests of judicial economy and convenience; (3) which forum promotes the  
6 uniformity and efficiency of bankruptcy administration; (4) which forum prevents forum shopping  
7 and confusion; and (5) whether the parties are entitled to a jury trial and have requested one. *Sec.*  
8 *Farms v. Int'l Bhd. of Teamsters, Chauffers, Warehousemen & Helpers*, 124 F.3d 999, 1008 (9th  
9 Cir. 1997) (*citing In re Orion Pictures Corp.*, 4 F.3d 1095, 1101 (2d Cir. 1993)). All these factors  
10 entail high-level, forum-specific analyses that will be identically applied to the Liberty and Sentinel  
11 Motions. Accordingly, UNFI submits that judicial economy and convenience clearly favor  
12 consolidating the Liberty and Sentinel Proceeding and allowing the parties to litigate these identical  
13 issues in accordance with a combined briefing schedule.

14       15. To the extent the court is inclined to grant this relief, UNFI proposes that it be entitled  
15 to submit a single opposition as to both the Sentinel and Liberty Motions, and that the deadline to  
16 file and serve that opposition be set twenty-one (21) days from the date of entry of the order granting  
17 the relief requested in this Motion. The deadline for Sentinel and Liberty to file and serve replies in  
18 support of their respective Motions can be set seven (7) days after UNFI's motion is filed, or by  
19 such other deadline as the Court deems just and proper.

### 20 CONCLUSION

21       16. For the foregoing reasons, UNFI respectfully requests that the Court enter an order  
22 ("Order") (1) consolidating the Sentinel and Liberty proceedings; (2) to the extent necessary,  
23 permitting UNFI to file a single opposition ("Opposition") to the Sentinel and Liberty Motions; (3)  
24 setting the deadline for UNFI to file the Opposition as twenty-one (21) days from the entry of the  
25



1 Order; and (4) setting the deadline for Sentinel and Liberty to file replies (or a single, combined  
2 reply, should they wish to do so) as 7 days from the filing of the Opposition (or such other deadline  
3 as the Court deems just and proper).

4 17. Alternatively, should the court not be inclined to grant the foregoing relief, UNFI  
5 respectfully requests that the Liberty and Sentinel Motions be stricken in accordance with LR 5-  
6 1(b).

7  
8 DATED: October 5, 2023

9 FENNEMORE CRAIG, P.C.

10  
11 By: /s/ Anthony Austin  
12 Anthony W. Austin, Esq., NV Bar No. 10850  
13 Kendall M. Lovell, Esq., NV Bar No. 15590  
14 9275 W. Russell Rds., Suite 240  
15 Las Vegas, NV 89148  
16 Telephone: (702) 692-8000  
17 Facsimile: (702) 692-8099  
18 Email: [aaustin@fennemorelaw.com](mailto:aaustin@fennemorelaw.com)  
19 Email: [klovell@fennemorelaw.com](mailto:klovell@fennemorelaw.com)  
20 Attorneys for Plaintiffs United Natural Foods  
21 West, Inc. and United Natural Foods, Inc

22  
23  
24  
25  
26  
27  
28  
**CERTIFICATE OF SERVICE**

21 I hereby certify this document filed through the ECF system was sent electronically to the  
22 registered participants as identified on the Notice of Electronic Filing (NEF), (2) was sent by email  
23 to Jason A. Benkner at [jbenkner@pooleshaffery.com](mailto:jbenkner@pooleshaffery.com); Bart K. Larsen at [blarsen@shea.law](mailto:blarsen@shea.law); Louis  
24 M. Buballa III at [lbubala@kcnvlaw.com](mailto:lbubala@kcnvlaw.com); and Daniel B. Heidtke at [dbheidtke@duanemorris.com](mailto:dbheidtke@duanemorris.com);  
25 and (3) was sent by first-class mail to the following parties on October 5, 2023.

26  
27 /s/ Gidget Kelsey  
28

1 Sentinel Insurance Company, Limited  
2 c/o Louis M. Bubala, III  
3 Kaempfer Crowell  
4 50 W. Liberty St., Ste 700  
5 Reno, NV 89501

6 Ohio Security Insurance Company;  
7 Peerless Indemnity Insurance Company;  
8 West American Insurance Company;  
9 c/o Dominica C. Anderson  
10 100 North City Parkway  
11 Suite 1560  
12 Las Vegas, NV 89106

13 Great American Insurance Group  
14 c/o Bart K. Larsen  
15 Shea Larsen PC  
16 1731 Village Ctr Cr, Ste 150  
17 Las Vegas, NV 89134

18 Real Water of Tennessee, LLC  
19 c/o Jason A. Benkner  
20 Poole Shaffery, LLP  
21 25350 Magic Mountain Parkway  
22 2<sup>nd</sup> Floor  
23 Santa Clarita, CA 91355

24 AFFINITYLIFESTYLES.COM, INC.  
25 Real Water, Inc.  
26 Real Water of Tennessee, LLC  
27 c/o Brent Jones  
28 18603 Legend Oaks Dr.  
Magnolia, TX 77355